

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE APPLICATION OF CYBEREASON
INC. AND CYBEREASON LABS LTD. FOR
AN ORDER PERMITTING ISSUANCE OF
SUBPOENAS TO TAKE DISCOVERY
PURSUANT TO 28 U.S.C. § 1782

Case No. _____

**APPLICATION FOR DISCOVERY IN AID OF A FOREIGN PROCEEDING
PURSUANT TO 28 U.S.C. § 1782**

1. Pursuant to 28 U.S.C. § 1782 and for the reasons explained in the concurrently filed Memorandum of Law and Declaration of Ram Landa (“Landa Decl.”), petitioner Cybereason Inc. and Cybereason Labs LTD (collectively, “Cybereason”) submits this application for an order permitting Cybereason to issue the subpoena to Jonathan Joseph Shelmerdine (“Shelmerdine”) for the production of documents and testimony for use in a foreign legal proceeding pending in Israel.¹

2. Section 1782 provides for discovery in the United States to assist tribunals and parties in proceedings before foreign or international tribunals. In relevant part, § 1782 states:

The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation. The order may be made . . . upon the application of any interested person and may direct that the testimony or statement be given, or the document or other thing be produced, before a person appointed by the court.

3. In brief, the requirements of § 1782 are met in this case because Shelmerdine is located in this District; (2) the discovery sought is “for use in” a proceeding before a foreign court, namely a legal proceeding pending in Israel; and (3) Cybereason is an “interested person” in that

¹ The subpoena is attached as Exhibit A to the memorandum filed concurrently herewith.

proceeding. The discretionary factors that a Court may consider when evaluating a § 1782 petition also weigh in favor of granting the Petition as (1) the evidence Cybereason seeks is otherwise unobtainable; (2) the Israeli court would be receptive to this Court's assistance; (3) Cybereason is not attempting to circumvent any Israeli or U.S. policies, and (4) the scope of Cybereason's discovery request is confined to the parties' dispute and is not unduly intrusive or burdensome.

4. For these reasons set forth in the accompanying Memorandum of Law, Cybereason respectfully requests that this Court enter an order (1) granting this application to take discovery from Mr. Shelmerdine pursuant to 28 U.S.C. § 1782 and (2) authorizing Cybereason to issue the subpoena attached as Exhibit A to Mr. Shelmerdine.

Respectfully submitted,

Dated: April 27, 2020

/s/ Mark E. Tully
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CERTIFICATE OF SERVICE

I hereby certify that on April 27, 2020, I caused a true and accurate copy of the foregoing to be served upon counsel as of this date by e-mail.

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